

Exhibit A

CASE NO. E-0194199-

[illegible]

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY):

E194-199

COURT (FOR CLERK USE ONLY):

172nd

STYLED TIMOTHY ALLEN V INTERNATIONAL COMFORT PRODUCTS

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:	
Name: <u>William T. Sebesta</u> Address: <u>450 Gears Rd., Ste 350</u> City/State/Zip: <u>Houston, Texas 77067</u> Signature: <u>[Signature]</u>		Email: <u>wsebesta@ds-lawyers.com</u> Telephone: <u>713-580-8900</u> Fax: <u>713-580-8910</u> State Bar No: <u>00784941</u>		Plaintiff(s)/Petitioner(s): <u>Timothy Allen</u> Defendant(s)/Respondent(s): <u>International Comfort Products</u> [Attach additional page as necessary to list all parties]	
				<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
				Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input checked="" type="checkbox"/> Other Injury or Damage: <u>Fire</u>	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Paternity/Parentage <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:				
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:				
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	

FILED
 DISTRICT COURT OF
 JEFFERSON COUNTY TEXAS
 13 MAR 28
 P 1:42

I CERTIFY THIS AS A TRUE COPY
Witness my Hand and Seal of Office

APR 24 2013

LOLITA RAMOS, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
BY *[Signature]* DEPUTY
120
P.R.

SCOT G. DOYEN*
WILLIAM T. SEBESTA
RANDALL J. POELMA, JR.
ANGELA M. HAHN



DOYEN SEBESTA
ATTORNEYS AT LAW

SHELTON J. McDONALD
BRETT J. HILL
ALASDAIR A. ROBERTS

*Board Certified - Civil Trial Law
Texas Board of Legal Specialization

WRITER'S DIRECT:
sgraham@ds-lawyers.com
713.580.8907

March 27, 2013

Via Regular First Class Mail

Lolita Ramos
District Clerk, Jefferson County
1001 Pearl Street, Room 203
Beaumont, TX 77701

FILED
DISTRICT COURT OF
JEFFERSON COUNTY TEXAS
MAR 28 AM 11:54
LOLITA RAMOS
DISTRICT CLERK

Re: Cause No. E194-199; Allstate Texas Lloyds as subrogee of Timothy Allen v. International Comfort Products, LLC.; In the 172nd District Court of Jefferson County, Texas

Dear Ms. Ramos:

Enclosed please find **Plaintiff's Original Petition and Request for Disclosure**, which I request you file with our check in the amount of \$265.00 to cover filing fees in the above referenced matter.

Please acknowledge receipt and date of filing by date stamping and returning the enclosed "RETURN" copy to me in the envelope provided.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

DOYEN SEBESTA, LTD, LLP

Shari Graham
Legal Assistant to William T. Sebesta

/slg
Enclosures as stated

I CERTIFY THIS AS A TRUE COPY
Witness my Hand and Seal of Office

APR 24 2013

LOLITA RAMOS, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
BY [Signature] DEPUTY

DR

Cause No: E-0194199

Date: 3/28/13

Receipt No: 278203

Style: TIMOTHY ALLEN

vs INTERNATIONAL COMFORT PRODUCTS LLC

Paid By: SEBESTA, WILLIAM T

Amt Paid: 265.00 CHECK

3153 Bal Due:

P

.00

10.00	RECORDS MANAGEMENT	10.00	COURT RECORD PRESERVATIO
5.00	RECORDS ARCHIVE FEE		
50.00	COUNTY FILING FEE		
50.00	STATE FILING FEE		
10.00	LIBRARY FEE		
15.00	MEDIATION CENTER FEE		
30.00	JURY		
15.00	STENO		
5.00	SECURITY FEE		
10.00	INDIGENT FEE		
42.00	JUDICIAL SUPPORT		
5.00	APPELLATE JUDICIAL SYSTE		

LOLITA RAMOS, CLERK DISTRICT COURTS
Jefferson County, Texas

By:

Tina

Deputy

I CERTIFY THIS AS A TRUE COPY
Witness my Hand and Seal of Office

APR 24 2013

LOLITA RAMOS, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
BY: Lolita Ramos DEPUTY
123
D2

EFILED

File & ServeXpress

Transaction ID: 51662738

Date: Mar 28 2013 11:55AM

Lolita Ramos, Clerk

CAUSE NO. E194-199

TIMOTHY ALLEN
Plaintiff,

v.

INTERNATIONAL COMFORT
PRODUCTS, LLC
Defendant.

§
§
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§
§
§
§
§

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

172nd

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION
AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Timothy Allen, files this Original Petition complaining of International Comfort Products, LLC and would show the following:

DISCOVERY

1. Plaintiff intends for discovery to be conducted under Level 3.

PARTIES

2. Timothy Allen is a resident of Port Neches, Jefferson County, Texas.
3. International Comfort Products, LLC is a Delaware company and may be

served through its registered agent as follows:

C T Corporation System
350 N. St. Paul St., Suite 2900
Dallas, TX 75201

Citation is requested at this time.

JURISDICTION AND VENUE

4. The Court has jurisdiction over defendant, because it does business in Texas.

The Court has jurisdiction over the controversy because the damages sought are within the jurisdictional limits of the Court.

Lolita Ramos
LOLITA RAMOS
CLERK OF DISTRICT COURT

13 MAR 28 AM 11:55

FILED
DISTRICT COURT OF
JEFFERSON COUNTY TEXAS

5. Venue is proper in Jefferson County, Texas because all or a substantial part of the events giving rise to this claim occurred in Jefferson County, Texas, and this lawsuit involves damage to a home in Jefferson County, Texas.

FACTS

6. On or about December 3, 2011, a fire damaged the Allen residence located at 2021 6th Street in Port Neches, Jefferson County, Texas. The fire started just outside the home, inside the control box of the Arcoaire ® A/C condenser unit that was designed, manufactured, and placed into the stream of commerce by Defendant. More specifically, the fire was caused by a defect within the control box, which caused the wires inside to overheat. As a result of the fire, the Allens sustained damage to their home and their household personal property.

CAUSE OF ACTION

7. Plaintiff re-alleges and incorporates by reference the previous paragraphs as if fully set forth herein verbatim, and would further show the Court the following:

8. Plaintiff would show that Defendant is liable under the theory of strict tort liability as set forth in Section 402a and 402b of the RESTATEMENT (SECOND) OF TORTS. Defendant was at all times material hereto engaged in the business of designing, manufacturing and selling the A/C condenser unit.

9. The condenser unit that caused damage to Plaintiff was defectively manufactured. The fire started when wires that supplied power to the compressor motor over heated, resulting in insulation melting and the ensuing fire. This overheating was a result of a malfunction either of the compressor or of a component inside the control box.

10. The manufacturing defect was present at the time the product left Defendant's possession and control. The product reached the end user without substantial

change in its condition from the time it was originally placed into the stream of commerce. The defect rendered the product unreasonably dangerous and was a producing cause of the damages sustained by Plaintiff. For these reasons, Defendant is strictly liable to Plaintiff under applicable products liability law without regard to or proof of negligence or gross negligence.

Malfunction theory

11. Plaintiff gives notice that it may rely on the evidentiary doctrine sometimes known as the “malfunction theory” in proving its case of liability against Defendant. Specifically, evidence of malfunction can provide circumstantial evidence of manufacturing defect. The condenser unit malfunctioned, and the evidence that the malfunction occurred exists in the form of the damaged condenser unit. Plaintiff would show this Court that the condenser unit deviated, in its construction and quality, from the specifications or planned output of the Defendant, and that the condenser unit was rendered unreasonably dangerous thereby. Plaintiff would further show this Court that the condenser unit was being used in a manner in which it was reasonably intended and/or reasonably foreseeable, and that the condenser unit malfunctioned.

DAMAGES

12. Plaintiff's damages to date consist of the cost to repair the Allen residence, the actual value of the damaged household personal property, and additional living expenses incurred while the house was being repaired. The damages sought are within the jurisdictional limits of the court, and the monetary relief sought is over \$200,000 but not more than \$1,000,000.

DEMAND FOR JURY TRIAL

13. Plaintiff demands a jury trial and has paid the appropriate fee.

REQUEST FOR DISCLOSURE

Under Texas Rule of Civil Procedure 194, Plaintiff requests that defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that defendant be cited to appear and to answer herein, and that upon a final hearing, the Court enter a judgment against defendant and in favor of the Plaintiff in the amount of Plaintiff's actual damages, plus prejudgment interest thereon at the legal rate, post-judgment interest at the legal rate, court costs, and for such other and further relief, both at law and in equity, to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

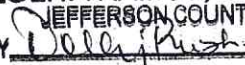

DOYEN SEBESTA, LTD. L.L.P.

By: 

William T. Sebesta
State Bar No. 00784941
wsebesta@ds-lawyers.com
Randall J. Poelma, Jr.
State Bar No. 24047823
rpoelma@ds-lawyers.com
450 Gears Rd., Suite 350
Houston, TX 77067
Phone: 713-580-8900
Fax: 713-580-8910
ATTORNEY FOR PLAINTIFF

I CERTIFY THIS AS A TRUE COPY
Witness my Hand and Seal of Office

APR 24 2013

LOLITA RAMOS, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
BY  DEPUTY




CITATION

THE STATE OF TEXAS

No. E-0194199

**TIMOTHY ALLEN
VS. INTERNATIONAL COMFORT PRODUCTS LLC**

CITATION

**172nd JUDICIAL DISTRICT COURT
of JEFFERSON COUNTY, TEXAS**

To: **INTERNATIONAL COMFORT PRODUCTS LLC
BY SERVING ITS REGISTERED AGENT
CT CORPORATION SYSTEM**

by serving at:
**350 N ST PAUL STREET
SUITE 2900
DALLAS, TX 75201**

DEFENDANT:

NOTICE:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Said answer may be filed by mailing same to: District Clerk's Office, 1001 Pearl St., 2nd floor, Beaumont, TX 77701, (or if the case is designated as an E-file case, E-file through Lexis Nexis file and serve) or by bringing it to the office. The case is presently pending before the 172nd District Court of Jefferson County sitting in Beaumont, Texas, and was filed on the 28th day of March, 2013. It bears cause number E-0194199 and is styled:

Plaintiff:

TIMOTHY ALLEN

VS.

INTERNATIONAL COMFORT PRODUCTS LLC

Defendant:

The name and address of the attorney for plaintiff (or plaintiff if pro se) is:

**SEBESTA, WILLIAM T, Atty.
450 GEARS ROAD SUITE 350
HOUSTON, TX 77067 0**

The nature of the demands of said plaintiff is shown by a true and correct copy of Plaintiff's PETITION (PLAINTIFF'S ORIGINAL) ALSO ATTACHED ORDER DESIGNATING ALL CASES EFILE accompanying this citation and made a part thereof.

Issued under my hand and the seal of said court, at Beaumont, Texas, this the 28th day of March, 2013.

**LOLITA RAMOS, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS**

BY
Ida

Ida Brumell

Deputy

2

RETURN OF SERVICE

E-0194199

172nd JUDICIAL DISTRICT COURT

TIMOTHY ALLEN

INTERNATIONAL COMFORT PRODUCTS LLC

Executed when copy was delivered:

This is a true copy of the original citation, was delivered to defendant _____, on the ____ day of _____, 20 ____.

_____, Officer
 _____, County, Texas
 By: _____, Deputy

ADDRESS FOR SERVICE:

INTERNATIONAL COMFORT PRODUCTS LLC
 BY SERVING ITS REGISTERED AGENT

DALLAS, TX 75201 0000

OFFICER'S RETURN

Came to hand on the ____ day of _____, 20____, at _____, o'clock ____m., and executed in _____, County, Texas by delivering to each of the within named defendants in person, a true copy of this Citation with the date of delivery endorsed thereon, together with the accompanying copy of the Citation at the following times and places, to-wit:

Name	Date/Time	Place, Course and Distance from Courthouse
_____	_____	_____

And not executed as to the defendant(s), _____

The diligence used in finding said defendant(s) being: _____

and the cause or failure to execute this process is: _____

and the information received as to the whereabouts of said defendant(s) being: _____

FEES:

Serving Petition and Copy \$ _____

Total \$ _____

_____, Officer
 _____, County, Texas

By: _____, Deputy

Affiant

COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign and return. The signature is not required to be verified. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return shall be signed under penalty of perjury and contain the following statement:

"My name is _____, my date of birth is _____, and my address is _____
 (First, Middle, Last)

(Street, City, Zip)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

Executed in _____, County, State of _____, on the ____ day of _____.

Declarant/Authorized Process Server

(Id # expiration of certification)

I CERTIFY THIS AS A TRUE COPY
Witness my Hand and Seal of Office

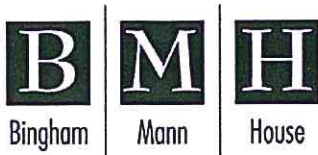
APR 24 2013

LOLITA RAMOS, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS

BY Dolly Rush DEPUTY
2P-21
DR

*****FILED*****

File & ServeXpress
Transaction ID: 5884049
Date: Apr 19 2013 03:58 PM
LolitaRamos@jcdclerk.com



April 19, 2013

By E-File

Lolita Ramos, District Clerk
Jefferson County District Court
1001 Pearl Street
Beaumont, TX 77701

Re: Cause No. E194-199; *Timothy Allen v. International Comfort Products, LLC*; In the
172nd Judicial District Court of Jefferson County, Texas

Dear Ms. Ramos:

Enclosed for filing in the above-entitled and numbered cause is the following:

Defendant's Original Answer.

By copy of this letter, I am forwarding a copy of the enclosure to all counsel of record.

Thank you for your courtesies in this matter.

Sincerely,

/s/ Debra Bradberry

Debra Bradberry

Enclosure

cc: By Facsimile 713-580-8910
William T. Sebesta
Randall J. Poelma, Jr.
DOYEN SEBESTA, LTD. L.L.P.
450 Gears Rd., Suite 350
Houston, TX 77067
Attorneys for Plaintiff

I CERTIFY THIS AS A TRUE COPY
Witness my Hand and Seal of Office

APR 24 2013

LOLITA RAMOS, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
BY Dolly Rush DEPUTY

IPB
DR

*****EFILED*****

File & ServeXpress
Transaction ID: 51884048
Date: Apr 19 2013 03:58PM
Lolita Ramos, Clerk

No. E194-199

TIMOTHY ALLEN,
Plaintiff,

v.

INTERNATIONAL COMFORT
PRODUCTS, LLC,
Defendant.

§
§
§
§
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§
§

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

172ND JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Carrier Corporation, incorrectly sued as International Comfort Products, LLC,
files this Original Answer and would show:

I.

Defendant denies generally all of the allegations in Plaintiff's Original Petition and
demands strict proof thereof.

WHEREFORE, PREMISES CONSIDERED, Defendant Carrier Corporation prays that
upon final hearing hereof, Plaintiff take nothing from this Defendant, that Judgment be entered in
Defendant's favor, that Defendant be granted its costs, and that Defendant be given such other
and further relief to which it may show itself to be justly entitled.

Respectfully submitted,

BINGHAM, MANN & HOUSE

BY: /s/ Bradley M. Bingham
BRADLEY M. BINGHAM
State Bar No. 02322400
DEBRA BRADBERRY
State Bar No. 24048362
4500 Yoakum Blvd.

12

Houston, Texas 77006
Telephone: (713) 357-9873
Facsimile: (713) 559-3050
bbingham@bmh-law.com
dbradberry@bmh-law.com

ATTORNEYS FOR DEFENDANT
CARRIER CORPORATION

CERTIFICATE OF SERVICE

I hereby certify service of the foregoing in accordance with the Texas Rules of Civil Procedure, on April 19, 2013.

/s/ Debra Bradberry
DEBRA BRADBERRY

I CERTIFY THIS AS A TRUE COPY
Witness my Hand and Seal of Office

APR 24 2013

LOLITA RAMOS, DISTRICT CLERK
JEFFERSON COUNTY, TEXAS
BY Dolly Rust DEPUTY

2ps.
Dr

OK

SCOT G. DOYEN*
WILLIAM T. SEBESTA
RANDALL J. POELMA, JR.
ANGELA M. HAHN

*Board Certified - Civil Trial Law
Texas Board of Legal Specialization



DOYEN SEBESTA
ATTORNEYS AT LAW

SHELTON J. McDONALD
BRETT J. HILL
ALASDAIR A. ROBERTS

WRITER'S DIRECT:
sgraham@ds-lawyers.com
713.580.8907

April 29, 2013

Via Regular First Class Mail

Lolita Ramos
District Clerk, Jefferson County
1001 Pearl Street, Room 203
Beaumont, TX 77701

Re: Cause No. E194-199; *Allstate Texas Lloyds as subrogee of Timothy Allen v. International Comfort Products, LLC and Carrier Corporation*; In the 172 District Court of Jefferson County, Texas

Dear Ms. Ramos:

Enclosed please find **Plaintiff's First Amended Petition**, which I request you file in the above referenced matter.

Please acknowledge receipt and date of filing by date stamping and returning the enclosed "RETURN" copy to me in the envelope provided.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

DOYEN SEBESTA, LTD, LLP

Shari Graham
Legal Assistant to William T. Sebesta

/slg

Enclosures as stated

CAUSE NO. E194-199

TIMOTHY ALLEN	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
v.	§	JEFFERSON COUNTY, TEXAS
	§	
	§	
INTERNATIONAL COMFORT	§	
PRODUCTS, LLC and CARRIER	§	
CORPORATION	§	172nd JUDICIAL DISTRICT
Defendants.		

PLAINTIFF'S FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Timothy Allen, files this First Amended Petition complaining of Defendants International Comfort Products, LLC and Carrier Corporation, and would show the following:

DISCOVERY

1. Plaintiff intends for discovery to be conducted under Level 3.

PARTIES

2. Timothy Allen is a resident of Port Neches, Jefferson County, Texas.
3. International Comfort Products, LLC is a Delaware company and has entered an appearance herein.
4. Carrier Corporation is a Delaware company and has entered an appearance herein.

JURISDICTION AND VENUE

4. The Court has jurisdiction over defendants, because each does business in Texas. The Court has jurisdiction over the controversy because the damages sought are within the jurisdictional limits of the Court.

5. Venue is proper in Jefferson County, Texas because all or a substantial part of the events giving rise to this claim occurred in Jefferson County, Texas, and this lawsuit involves damage to a home in Jefferson County, Texas.

FACTS

6. On or about December 3, 2011, a fire damaged the Allen residence located at 2021 6th Street in Port Neches, Jefferson County, Texas. The fire started just outside the home, inside the control box of the Arcoaire ® A/C condenser unit that was designed, manufactured, and placed into the stream of commerce by Defendants. More specifically, the fire was caused by a defect within the control box, which caused the wires inside to overheat. As a result of the fire, the Allens sustained damage to their home and their household personal property.

CAUSE OF ACTION

7. Plaintiff re-alleges and incorporates by reference the previous paragraphs as if fully set forth herein verbatim, and would further show the Court the following:

8. Plaintiff would show that Defendants are liable under the theory of strict tort liability as set forth in Section 402a and 402b of the RESTATEMENT (SECOND) OF TORTS. Defendants were at all times material hereto engaged in the business of designing, manufacturing and selling the A/C condenser unit.

9. The condenser unit that caused damage to Plaintiff was defectively manufactured. The fire started when wires that supplied power to the compressor motor over heated, resulting in insulation melting and the ensuing fire. This overheating was a result of a malfunction either of the compressor or of a component inside the control box.

10. The manufacturing defect was present at the time the product left Defendant's possession and control. The product reached the end user without substantial

change in its condition from the time it was originally placed into the stream of commerce. The defect rendered the product unreasonably dangerous and was a producing cause of the damages sustained by Plaintiff. For these reasons, Defendants are strictly liable to Plaintiff under applicable products liability law without regard to or proof of negligence or gross negligence.

Malfunction theory

11. Plaintiff gives notice that it may rely on the evidentiary doctrine sometimes known as the "malfunction theory" in proving its case of liability against Defendants. Specifically, evidence of malfunction can provide circumstantial evidence of manufacturing defect. The condenser unit malfunctioned, and the evidence that the malfunction occurred exists in the form of the damaged condenser unit. Plaintiff would show this Court that the condenser unit deviated, in its construction and quality, from the specifications or planned output of the Defendants, and that the condenser unit was rendered unreasonably dangerous thereby. Plaintiff would further show this Court that the condenser unit was being used in a manner in which it was reasonably intended and/or reasonably foreseeable, and that the condenser unit malfunctioned.

DAMAGES

12. Plaintiff's damages to date consist of the cost to repair the Allen residence, the actual value of the damaged household personal property, and additional living expenses incurred while the house was being repaired. The damages sought are within the jurisdictional limits of the court, and the monetary relief sought is over \$200,000 but not more than \$1,000,000.

DEMAND FOR JURY TRIAL

13. Plaintiff demands a jury trial and has paid the appropriate fee.

REQUEST FOR DISCLOSURE

Under Texas Rule of Civil Procedure 194, Plaintiff requests that defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that defendants be cited to appear and to answer herein, and that upon a final hearing, the Court enter a judgment against defendants and in favor of the Plaintiff in the amount of Plaintiff's actual damages, plus prejudgment interest thereon at the legal rate, post-judgment interest at the legal rate, court costs, and for such other and further relief, both at law and in equity, to which Plaintiff may show itself to be justly entitled.

Respectfully submitted,

DOYEN SEBESTA, LTD. L.L.P.

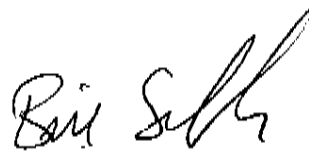
By: 

William T. Sebesta
State Bar No. 00784941
wsebesta@ds-lawyers.com
Randall J. Poelma, Jr.
State Bar No. 24047823
rpoelma@ds-lawyers.com
450 Gears Rd., Suite 350
Houston, TX 77067
Phone: 713-580-8900
Fax: 713-580-8910
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was forwarded to all counsel of record, pursuant to the Texas Rules of Civil Procedure, on the 29th day of April, 2013.

Bradley M. Bingham
Debra Bradberry
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